



# Recommendations for Congress on Indian Country

109th Congress, 1st Session



July 2005

Dear Reader,

Last fall, Senate Democrats convened over 150 tribal leaders for the first ever Senate Democratic Native American Leadership Forum. The policy discussions held at the Forum established five working groups comprised of tribal leaders and advocates. Their efforts resulted in the 2005 Indian Country policy recommendations for the 109th Congress.

Senate Democrats initiated this process because we wanted to hear directly from Indian Country about the issues of greatest concern to you. This body of work represents months of collaborative effort by many leaders across Indian Country. On behalf of the Democratic Caucus, I want to express my gratitude for this work which will inform our efforts in the 109th Congress and beyond.

Sincerely,

A handwritten signature in black ink, which appears to read "Byron L. Dorgan". The signature is fluid and cursive, with a long, sweeping underline.

Byron Dorgan





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# Trust Reform, Land and Natural Resources

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## Policy Recommendation #1:

*Congress should clarify the manner in which it carries out the fiduciary duties owed to Indian tribes and individual Indians. Specifically, the following federal reforms are necessary:*

- Clarify trust standards applicable to the management of Indian trust assets;
- Provide a process to settle past and future claims, both individual and tribal;
- Aid in the fair resolution of the *Cobell v. Norton* litigation by ensuring that the resolution of this lawsuit is expedited;
- Establish a process so that any trust principles defined by Congress are followed in the management of the trust accounts and assures the proper management and protection of the trust corpus;
- Ensure that tribal governments are consulted and have input into any proposed reform legislation;
- Support federal funding for land consolidation as a long-term solution to the trust reform problem.

### **Background:**

For over a century, the United States has acted as trustee of the lands, resources and funds held in trust for Indian tribes and for individual Indians. The United States has organized and administered the trust assets poorly, and the government should fulfill its obligations as trustee. One government report concluded that this amounts to “fraud, corruption and institutional incompetence almost beyond the possibility of comprehension” (“Business & Accounting Methods, Indian Bureau,” Report of the Joint Commission of the Congress of the United States, 63rd Cong. 3d Sess., at 2 (1915)). It is alleged that the United States’ action has resulted in the loss of substantial amounts of money held in trust for Indian tribes and individual Indians.

### **Action Steps for the United States Senate:**

- Hold hearings on resolving the *Cobell v. Norton* case in a fair manner.
- Enact legislation that addresses the past and future claims of both individual Indians and Indian tribes.
- Ensure that Indian tribes and individual Indians are consulted in the drafting of any trust reform legislation.

### **Policy Recommendation #2:**

*Clarify the vital importance of placing land into trust by holding oversight hearings to require that the Department of the Interior take a different and better approach to these issues.*

### **Background:**

As a result of the failed allotment policies forced upon tribal communities from 1887 to 1934, tribes lost nearly two-thirds of their land, which had been reserved in various treaties. The resulting economic hardship caused by the allotment policy is still felt today in the loss of land and natural resources and in the break-up of many reservation communities.

In recognition of the failure of the allotment policy, Congress enacted *The Indian Reorganization Act (IRA)* in 1934. Much of the land was not recoverable as it was in private hands. Section 5 of the *IRA* authorized the Secretary to place land into trust for tribes and individual Indians, reversing in a small but meaningful way the disastrous impact of the allotment policy.

However, over the past few years, the Department of Interior has delayed acting on land into trust applications. This delay greatly hampers the ability of tribes to develop tribal economies and provide housing for tribal members.

### **Action Steps for the United States Senate:**

- Build on the success of previous land consolidation efforts by providing additional funding and incentives to encourage land consolidation.
- The Committee on Indian Affairs should hold an oversight hearing on the Department of Interior's land into trust process and, if necessary, enact legislation to define or require a different, better process for the Department of Interior to use.

### **Policy Recommendation #3:**

*Congress should require the Administration to consult with tribes on all decisions impacting their land and natural resources, including use and disposition of tribal and individual Indian water rights.*

### **Background:**

Presently, tribes are sporadically consulted regarding the use, sale, and development of their natural resources. Tribes retain rights as sovereign governments to be centrally involved in these decisions; yet all too often the federal government acts without tribal input on vital decisions that impact lives and natural resources on reservation communities. At other times, tribes are brought in very late into the process, when critical determinations have already been made. These actions undermine the sovereign rights of tribes and violate the



sacred trust responsibility owed to Indian people.

**Action Steps for the United States Senate:**

- Conduct oversight hearings on the Administration's efforts to consult with tribes on decisions impacting tribal lands and resources.
- Enact legislation mandating that all federal agencies consult with any affected tribal community before the agency implements any change in policy or renders a decision on any issue that will impact tribal communities, their land and natural resources.



## Health Care

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### **Policy Recommendation #1:**

*Congress should substantially increase funding for the Indian Health Service (IHS) to the level necessary to meet the federal government's responsibility to provide quality health care to American Indians and Alaska Natives (AIAN). The Federal government should commit to eliminating the funding shortfall over the next 10 years.*

### **Background:**

While the federal government has committed to provide health care to Native Americans, it is failing to fulfill this obligation. Funding for IHS is woefully inadequate. While per capita health care spending for the general U.S. population is about \$5,000 each year, per capita spending for each IHS beneficiary is less than \$2,000 each year. The federal government spends nearly twice as much per capita on health care for federal prisoners as it spends on health care for Native Americans.

As a result, many Native Americans receive health care that is far inferior to that enjoyed by the majority of Americans. Indians are routinely denied care that other Americans take for granted and, in many cases, is considered essential. Because IHS provides health care services directly, inadequate funding can lead to actual reductions in patient services. In many areas, patients must have a life-threatening condition or be at risk of losing a limb before they can access care

outside of the IHS system. This literal “life or limb” requirement means Indians do not receive care until their condition has deteriorated significantly and may not receive needed care at all if funding for contract health services runs out before the end of the year.

In addition to inadequate funding of patient care services, there are problems with IHS facilities. The average age of IHS facilities is 32 years, compared to nine years for private sector health facilities. The backlog for maintenance and repair of IHS facilities is about \$470 million. The location of IHS facilities can also require AIAN patients to travel long distances to access covered care, which is especially problematic when care is needed urgently and when patients have limited access to transportation.

#### **Action Steps for the United States Senate:**

- Increase federal appropriations for IHS.
- Support legislation creating a commission to make recommendations on creating a health care entitlement for AIAN and assess the impact on treaties.
- Work with the Government Accountability Office (GAO) to complete its analysis of IHS funding and access to care by AIAN.

#### **Policy Recommendation #2:**

Congress should increase its focus on health promotion and disease prevention in Indian Country by creating a flexible grant program for preventive health services to supplement existing preventive care funds provided by IHS.

#### **Background:**

Native Americans disproportionately suffer from many serious diseases and health problems such as diabetes, cardiovascular disease, obesity, substance abuse, certain communicable diseases, and physical injuries. The implementation of effective health promotion and disease prevention initiatives could reduce the incidence of these dis-

eases or delay the onset of related complications. For example, diabetes, obesity and cardiovascular disease could be avoided through lifestyle changes (e.g., diet and exercise). Diagnosis and symptom identification at earlier, more treatable stages through appropriate screening would make intervention and the arrest of disease development possible and enhance the management of chronic health indicators through patients' self-management and preventive care.

Prevention is also critical to addressing the health and social problems caused by addiction to alcohol, other drugs, and tobacco. Mental health problems are often untreated and are often the root cause of drug and alcohol abuse. Despite recognition of the importance of prevention, inadequate funding often precludes tribes from adequately implementing these programs. When funds are insufficient, immediate needs, such as emergency care, often take precedence over preventive programs.

### **Action Steps for the United States Senate:**

- Develop legislation authorizing a preventive health services block grant through the IHS, similar to the Preventive Health and Health Services Block Grant (a flexible source of preventive health funds provided to states, U.S. territories, and two tribes).
- Ensure that tribes are eligible for programs expanded or created in other preventive health bills introduced in the 109th Congress.
- Provide \$200 million for culturally relevant disease prevention and health promotion projects at the tribal level.

### **Policy Recommendation #3:**

Congress should respect tribal sovereignty by providing greater flexibility in administration of health care programs. Congress should identify legislative or non-legislative ways so that tribes have the flexibility necessary to provide for the health care needs of the tribal members and to enhance tribal representation on Department of

Health and Human Services (HHS) work groups and committees as well as the Medicare Payment Advisory Commission (MedPAC).

### **Background:**

*The Indian Self-Determination and Educational Assistance Act of 1975* recognized the importance of authorizing tribes to manage all or some of their health care programs, through contracts and compacts. Today, about 50 percent of the IHS budget is administered by tribes. In 1994, President Clinton signed an Executive Memorandum that directed federal departments and agencies to consult with tribal governments prior to taking actions affecting Indian people and reaffirmed the government-to-government relationship between tribes and the federal government. Yet, problems continue to arise. There are difficulties working with federal/state health programs like Medicaid and the State Children's Health Insurance Program and problems in recognizing traditional healers and the use of traditional medicine, which may be considered complimentary and therefore as alternative health care providers and practices. Moreover, there are barriers to accessing non-IHS funds that are available through HHS.

Tribal leaders have also noted that inadequate representation exists on HHS work groups and committees outside of IHS. For example, the Medicare Payment Advisory Commission (MedPAC) is an independent federal body established by the Balanced Budget Act of 1997 (P.L. 105–33) to advise the U.S. Congress on issues affecting the Medicare program. The Commission's statutory mandate is quite broad and includes advising Congress on Medicare and analyzing other critical issues affecting Medicare. While a significant number of Native Americans receive Medicare assistance, the Commission has never had a member who represents American Indian health issues (Source: <http://www.medpac.gov>).

### **Action Steps for the United States Senate:**

- Work with tribal leaders to identify priority areas to enhance tribes' flexibility in administering health care programs and determine whether these areas require a change in legislation.

- Communicate to the Administration the need to enhance tribal representation on all relevant HHS work groups and committees, not just those run by IHS.
- Work informally with MedPAC to ensure a focus on American Indian issues and to identify qualified American Indian candidates for consideration on the MedPAC board.



# Education

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## Policy Recommendation #1:

*Congress should amend the No Child Left Behind Act (NCLB) to address implementation problems specific and unique to Indian Country including the incorporation of culturally based education strategies. Specifically, Congress should:*

- *Recognize tribal authority and sovereignty.*
- *Mandate and authorize funding to study the value and importance of culturally based education; the cultural relevancy of successful Indian education programs; and the effectiveness of culturally based curricula and requirements in the Office of Indian Education Programs.*
- *Amend the Adequate Yearly Progress (AYP) requirement for Indian communities so that it accounts for issues specific to Indian communities including the use of individual progress when evaluating AYP.*

## Background:

The unique aspects of Indian country present challenges that are not adequately addressed by NCLB. Areas of particular concern include: culturally relevant programming and adequate yearly progress.

Culturally Relevant Academic Programming: The incorporation of Native American culture and traditions into academic curriculum and education programming is essential to success in Indian education. The study and development of sound, culturally relevant curricula should be supported to ensure effective implementation of education programs and requirements in Indian country.

NCLB formally recognizes the federal government's support for culturally based education approaches as a strategy for positively impacting the achievement of Native American students. However, the time frame for results under NCLB do not adequately account for the investment in time and resources required to develop effective culturally based education approaches or to develop curricula that reflect the cultural and linguistic heritage of the community. In Indian Country, there is no "one size fits all" when it comes to culturally based curricula. Each Indian community has to develop its own curriculum because each Indian community has its own language, culture and history.

Adequate Yearly Progress: NCLB does not authorize consideration of the different culturally-relevant teaching methods or conditions unique to schools with a high Indian population when determining AYP. Because the educational curriculum for each tribe or Native American community is based on its unique culture and history, each school utilizes different teaching methods and curriculum requirements. For example, many tribal schools teach only Native languages through the third grade. NCLB, however, measures AYP through tests given in English only at the third grade level, resulting in the school being labeled in need of improvement.

In addition, low school attendance in Native American communities is a chronic problem. Specifically, Native communities experience a low attendance level at high school grade levels (9–12), yet NCLB requires attendance at all grade levels to be considered when determining AYP. Moreover, high drop out rates and a high rate of student mobility among schools in Indian communities can have a significant impact on year-to-year testing results. Under NCLB,



these test results are used to evaluate the progress of schools and determine AYP.

NCLB also fails to provide sufficient support for native language preservation, which is important for student engagement and retention.

Native students are making individual progress, but not at the rate AYP requires. NCLB should consider the significant progress that is made by Native students on a yearly basis before deeming a school in need of improvement, should count K–8 attendance separately from 9–12 attendance, and should examine student mobility.

#### **Action Steps for the United States Senate:**

- Hold joint hearings on the unique education challenges under NCLB for Indian Country with the Indian Affairs and Health, Education, Labor, and Pensions (HELP) Committees.
- Ensure that every moving bill addressing education issues has an adequate component to address similar culturally appropriate Indian education needs.

#### **Policy Recommendation #2:**

*Congress should provide adequate federal resources to fulfill the federal government's obligation to educate Indian children. Specifically, Congress should:*

- *Fully fund the No Child Left Behind (NCLB) Act, including Title VII and any other Native specific programs, or at a minimum, increase funding by 5 percent for Native American education programs over the FY 2005 level to account for Indian education funding failing to keep pace with the Department of Education and appropriate at least \$5 million for Tribal Education Departments in FY 2006.*
- *Fully forward-fund Bureau of Indian Affairs education*

*programs, including the scholarship program and Johnson O'Malley.*

- *Fully fund Impact Aid.*
- *Increase support for increased authorization levels, full funding and forward funding of tribal colleges and universities (TCUs).*

### **Background:**

According to a September 2003 Government Accountability Office report on Bureau of Indian Affairs (BIA) schools, the BIA student population “is characterized by factors that are generally associated with higher costs in education. Almost all students live in poverty, and more than half are limited in English proficiency. A substantial number have disabilities” (GAO-03-955, p. 5).

In addition, the factors highlighted in the GAO study would likewise affect non-BIA schools with large Indian populations. Because of the higher cost of educating Native populations, adequately funding schools serving Indian Country is an absolute necessity to improve education and fulfill the government’s trust responsibility. Impact Aid provides these critical funds to operate public schools serving Native American children. It helps to ensure military children, children residing on Indian reservations and in federally owned low rent housing facilities, living on federally owned property, or are otherwise “federally connected” receive a quality education. In addition, the program assists local school districts that have lost property tax revenue due to the presence of tax-exempt Federal property, or that have experienced increased spending due to enrollment of federally connected children.

Schools in Indian Country do not get the funding they need until they have been found in need of improvement. This reactionary funding makes it extremely difficult for schools to meet student’s needs before problems develop. The failure to adequately fund No Child Left Behind has created numerous problems for educators

across the country. Adequate funding of schools serving Indian students will allow for the development of culturally oriented academic programs, efficient data collection and assessment strategy related to implementing culturally based education, and enhancing tribal self-governance and self-determination over education issues.

With respect to Johnson O'Malley (JOM), funding is currently based on the 1994 Indian student population count. Not only has the total Indian student population grown significantly since that time, but the Indian student population varies greatly by tribe. Funding should be in accordance with current Indian student population so that any increases or decreases in tribal Indian student count are reflected in JOM funding distribution.

At the higher education level, tribal colleges and universities are an effective means to providing a quality education to more and more tribal students. However, as the number of institutions and their enrollments continue to grow; funding needs be increased and then keep pace so they have the resources to accommodate a larger student body. The vast majority of tribal colleges and universities must provide remedial services for students inadequately prepared for college, although funding is not provided for these critically needed services.

#### **Action Steps for the United States Senate:**

- Provide adequate funding for tribal colleges and K-12 schools prior to the beginning of each school year to assure better accountability for tribal finances, and to establish more efficient and effective financial planning.
- Update Johnson-O'Malley programs to authorize funding based on current population.
- Ensure that all education related legislation includes a component to adequately address Indian education needs, and provide the necessary funding to meet those needs.

### Policy Recommendation # 3:

*Congress should address teacher quality and recruitment efforts in Indian Country with a focus on hiring and retaining qualified and culturally sensitive educators. Specifically, Congress should:*

- Modify the “Highly Qualified Teacher Requirements” for educators in Indian Country to include a component that takes into account the teacher’s knowledge of Native traditions, values, and beliefs. This provision would only apply to educators working in Indian schools.*
- Increase funding for loan forgiveness programs in Indian Country, including Tribal Teacher Training Grants.*
- Pass and fully fund the Tribal College or University Teacher Loan Forgiveness Act to help attract qualified educators to tribal colleges and universities.*
- Increase grant funding for Teach for America.*
- Support professional development service programs in schools with a significant Native student population.*
- Address the challenges remote and isolated Native communities face in recruiting teachers that are highly qualified in several different subject matters.*

### Background:

Under the No Child Left Behind Act (NCLB), educators must meet “Highly Qualified Teacher Requirements.” These requirements encompass the teacher’s education, possession of relevant certification, and subject matter competence. For teachers in Indian schools, there should be an additional component to take into account a teacher’s knowledge of local traditions, Native beliefs, culture, and values.

Requiring teachers to have knowledge of Native customs and traditions as a component of the “Highly Qualified Teacher Requirements” will bring more culturally sensitive educators to the classroom in Indian Country, and preserve the cultural identity of those communities.

Unfortunately, low salaries and geographic isolation are major factors in preventing highly qualified and dedicated educators from teaching in Indian Country. Grant and loan forgiveness programs are the primary vehicles used to recruit and retain teachers in Native American communities.

The Government Accountability Office’s report 04–909, “No Child Left Behind Act: Additional Assistance and Research on Effective Strategies Would Help Small Rural Districts,” found that rural districts faced additional challenges in implementing No Child Left Behind. A significant hurdle to implementation was teacher recruitment. The geographic isolation of rural schools, their inability to offer competitive salaries, and the lack of adequate housing has significantly affected their ability to attract and retain qualified teachers. In addition, Indian tribes have indicated that professional development programs have improved the skills of their teachers and that the lack of funding for professional development programs affects their ability to recruit and retain teachers.

Loan forgiveness programs have proven to be an effective approach to recruiting teachers in Indian Country. Tribal Teacher Training Grants, included in the NCLB Act, are offered to institutions to provide financial assistance to students currently participating in teacher development programs. Recipients of these grants are required to teach in Indian Country for one year for each year of college in which he or she received federal assistance. In addition, the Tribal College or University Teacher Loan Forgiveness Act, if passed, would forgive up to \$15,000 in student loans for certified faculty and nursing instructors who commit to teach at a tribal college or university. With the prevalence of low teacher and faculty salaries in Indian schools, these programs are vitally important to attract educators faced with college loans.

In addition to loan forgiveness programs, the Teach for America Program has recently expanded from primarily urban communities to include rural and reservation areas. The program has received high praise in Indian Country, and has the potential to bring dedicated and qualified teachers to Indian schools.

**Action Steps in the United States Senate:**

- Hold hearings in the unique challenges to teacher quality and recruitment in Indian country.
- Develop and introduce legislation designed to address these problems.
- Ensure that every bill which includes education, including relevant spending bills, has a component to adequately address similar Indian education needs.



# Housing, Infrastructure and Economic Development

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## Policy Recommendation # 1:

*The Senate should support efforts to increase housing funding to AIAN, enact legislation that improves the federal housing programs, and support the policy of self-determination. Additionally, the Senate should ensure that the Department of Housing and Urban Development (HUD) appropriately implements its Tribal Consultation Policy, particularly in light of the recent Executive Memorandum reaffirming the government-to-government relationship between the Federal government and tribal nations.*

### Background:

There is a significant need for adequate housing in Indian Country. An estimated 200,000 housing units are needed immediately throughout Indian country. Approximately 90,000 Native families are homeless or under-housed and in tribal areas, 14.7 percent of homes are overcrowded compared to 5.7 percent of homes of the general U.S. population. Also, 11.7 percent of residents lack complete plumbing facilities, compared to 1.2 percent of the general U.S. population. Tribes mostly rely on *Native American Housing Assistance and Self-Determination Act* (NAHASDA) funds, administered by HUD, for their housing needs.

Not only is housing inadequate, there is a deficit of actual homeowners in Indian country. As such financial literacy and home buyer education programs are critical to improve native people's ability

to qualify for financing. Homeownership for Native Americans in 2001 was 12 percentage points below the national rate. More recent statistics reveal that Native Americans lag behind white home owners in some instances ranking in the double digits.

HUD is obligated by law to meaningfully consult with tribes on any issue that significantly impacts them. The current consultation policy allows for the creation of an advisory committee that would review all issues to determine which should be taken before a standing negotiated rulemaking committee. However, HUD has recently made two policy decisions with far-reaching implications without tribal consultation. The first was to substantially expand the data set used in calculating need for the Indian Housing Block Grant formula to include multiple-race data collected by the U.S. Census Bureau. This decision shifted large amounts of housing funding from certain tribal areas to others. The second decision was to authorize utilization of federal home loan guarantees across entire states, which many fear will negatively impact utilization of the program on the tribal lands for which it was created. At this time, the tribes have no mechanism for appealing these actions.

#### **Action Steps for the United States Senate:**

- Enact legislation or include language in a Committee Report directing HUD to fully implement its existing consultation policy and/or conduct oversight hearings on the subject, as well as define a process of appeal for the tribes.
- Enact legislation to expand homebuyer education resources and to streamline the BIA mortgage approval and title processes in Indian Country.
- Fully fund HUD, USDA, and BIA Indian housing programs.
- Support S. 475, a bill to amend the *Native American Housing Assistance and Self-Determination Act of 1996* and other Acts to improve housing for Indians.



- Expand HUD’s minority homeownership initiative to include Native Americans.

### **Policy Recommendation #1a:**

*A funding source outside of those allocated through the Indian Housing Block Grant should be provided to address problems of the growing mold problem in federally assisted tribal homes, both to remediate current infestation and to prevent future growth, and to educate tribal members on the health and safety issues related to severe mold problems.*

### **Background:**

Indian Housing Block Grant funding is inadequate for current needs. In addition to substandard housing, mold is a serious problem in Indian Country, according to a report by the U.S. Department of Housing and Urban Development (HUD), “Mold and Moisture Problems in Native American Housing on Tribal Lands: A Report to Congress,” black mold can be found in 15 percent of tribal homes. Children and families living in mold laden homes face serious health risks.

This issue has been a concern for many years, but to date no new funding or remediation programs have been authorized. While tribes may use their NAHASDA funds, Indian Community Block Grant funds, or Healthy Homes funds to address mold issues, all of these funds are already desperately needed to address basic housing needs such as home construction and rehabilitation due to the age of the units, overcrowding, and a lack of housing stock. A separate program with a new stream of funding is necessary to address this serious health issue.

Furthermore, due to the nature of mold growth and the need to address each situation properly to have a lasting effect, technical assistance, training, and information on best practices is vital so that the mold does not return. As the HUD study notes, there is a wide range of knowledge and programmatic approaches to mold. Tribes must be able to access information on what would be the best

approach for them.

#### **Action Steps for the United States Senate:**

- Develop specific legislative language to separately fund a mold remediation and prevention program in Indian Country.

#### **Policy Recommendation #2:**

*Congress should insure that transportation legislation to reauthorize the Transportation in Equity Act of the 21st Century (TEA-21) reflects the needs of tribal governments.*

#### **Background:**

Tribal governments presently receive funding from the Indian Reservation Roads (IRR) program, which is a part of the Federal Lands Highway Program (FLHP). The mission of the FLHP is to provide funding for a coordinated program of public roads and transit facilities serving Federal and Indian Lands. Currently, Indian tribes receive \$275 million dollars annually from the funds appropriated to the FLHP, roughly 0.6 percent of the total TEA-21 funding authorization for the Federal-Aid Highway system.

According to the Tribal Transportation Task Force, Indian Country has a vast backlog of roads in need of construction and maintenance. As such, tribal governments are in need of additional funding for the IRR program. Additional needs include but are not limited to direct access to federal programs and the removal of the obligation ceiling limitation.

#### **Action Steps for the United States Senate:**

- Assure that TEA-21 strengthens and enhances Indian Country programs and reflects the needs and priorities of Indian Country.

#### **Policy recommendation #2a:**

*Congress should include provisions in the reauthorization of the 1996 Telecommunications Act to ensure that Indian Country is*

*provided access to telecommunications and to strengthen the role of tribes in native owned radio stations and public television. Congress must direct the Federal Communications Commission to develop a regulatory scheme that accurately considers State and tribal regulatory and jurisdictional authority in Indian Country and on Alaska Native lands.*

### **Background:**

A communication crisis exists today in Indian communities. Only 67.9 percent of Indian homes in Indian communities have telephone service in their homes, and only 10 percent have access to internet service or personal computers. Fortunately, significant barriers to telecommunications and technology development have been identified so policy solutions are clear. Barriers include geographic isolation, lack of capital for development, lack of training and technical assistance, high poverty rates and low educational attainment rates. These barriers limit the ability of tribal governments to exercise self-determination over their telecommunications needs.

### **Action Steps for the United States Senate:**

- Ensure that legislation reauthorizing the *1996 Telecommunications Act* includes: (1) definitions specific to Indian Country and tribal needs, and (2) a mechanism, with enforcement powers, for ensuring equitable and affordable access to telecommunications services, including broadband and emerging technologies, in Indian Country.
- Consider issues concerning tribal ownership and management of spectrum on tribal lands for both wireless and broadcast applications and considers incentives and other means to promote cooperation among tribes, States, and the Federal Communications Commission and remedies for resolving unforeseen conflicts.

### **Policy Recommendation #2b:**

*Congress should provide increased funding to address the safety and adequacy of the water supply and waste disposal facilities funded*

*by Indian Health Services, Environmental Protection Agency and the United States Department of Agriculture to include tribal comprehensive planning and tribal management capacity building.*

#### **Background:**

Safe water supply and waste disposal facilities are lacking in approximately 12 percent of American Indian and Alaska Native homes compared to 1 percent of the general U.S. population. In some parts of the country, 35 percent of Native American's homes lack these systems. Data shows that families with satisfactory environmental conditions in their homes require 75 percent fewer medical services. Current funding levels are not sufficient to allow for the development of comprehensive planning and the development of sustainable, integrated, long-term solutions. Many funding sources are for site-specific developments without longer-term operations and maintenance resources.

#### **Action Steps for the United States Senate:**

- Support increased funding levels to address the need for water supply and waste disposal facilities in Indian Country and ensure that Federal funding promotes tribal capacity building to develop and maintain comprehensive infrastructure planning.

#### **Policy Recommendation # 3:**

*Congress should enact legislation that creates parity for Indians in the tax code and support existing business assistance programs that have a proven record of working in Indian Country, such as the Community Development Financial Institution program (CDFI), tribal business information centers (TBIC), financial literacy programs, Section 8(a) minority owned small business program, and other federal small and disadvantaged business procurement programs.*

#### **Background:**

While Indian Country is seeing some economic successes, many

Native communities still suffer from unemployment and lack of earning capacity. Current statistics suggest that the jobless rate in Native communities is somewhere between 45 percent and 80 percent, while the U.S. national rate is 5.6 percent. The earning capacity of Native people also lags behind that of other Americans. For every \$100 earned by the average non-Indian family, an Indian family earns \$62. The average annual per capita income for Indians is \$8,284, far less than \$14,420 for Americans as a whole. Today, many Native Americans face the dual burdens of economic hardship and lack of opportunity. Unfortunately, the Federal government has been slow in responding to the challenges of promoting business development in Native American communities.

Native-specific tax provisions are required to encourage economic development, promote self-sufficiency by Native Americans and ensure that tribes are treated on parity with State and local governments. For instance, tax-exempt bonds are an important tool for tribes and other units of government. However, while state and local governments can issue tax exempt bonds for virtually any purpose, including for a broad array of economic development opportunities, tribal governments are precluded from using tax-exempt bonds for the same purposes. Instead, tribes are held to a stringent “essential government function” test under Section 7871 of the federal tax code which prevents the use of tax-exempt bonds for many of the same purposes for which State and local governments use the bonds.

Financial education is critical to successful economic development across America, yet research shows that there is limited financial expertise and inadequate financial education resources to meet the demand in Native communities. (“Financial Education in Native Communities: A Briefing Paper,” the First Nations Development Institute, CFED and the National Congress of American Indians, 2003.) These limitations have significantly hindered the economic health of Native communities, which have historically been underserved by the financial services industry. As a result, the need for financial education in Native communities is severe. The most

effective financial education programs are integrated into other services and programs such as credit counseling and repair, homebuyer education, Individual Development Accounts, free tax preparation services that help families file for the Earned Income Tax Credit, workforce development, and small business and entrepreneurship training. It has been proven effective to link financial education to asset building efforts such as these.

CDFIs are examples of good delivery models for these types of integrated services. Native CDFIs have emerged as a critical source of financing and financial education for Native communities. In some cases, they may be the only lender offering affordable financial services. CDFIs are required to provide “development services” in order to prepare borrowers to qualify for financing. This function has greatly expanded the financial education programs available to Native Americans and these proven programs should be expanded. However, the Administration is proposing to transfer the CDFI fund from the Department of Treasury to the Department of Commerce. This transfer will not solve the funding problem that CDFIs face and may lead to further erosion of this initiatives goals.

#### **Action Steps for the United States Senate:**

- Work closely with tribes to ensure that tax, small business, and telecommunications legislation reflects the needs of Indian Country.
- Draft legislation to create a program to support financial education program development in Native communities.
- Draft legislation preventing the transfer of the CDFI fund to the Department of Commerce and appropriate at least \$80 million to the CDFI.



# Justice, Law Enforcement and Homeland Security

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## Policy Recommendation # 1:

*Congress should strengthen the tribal provisions in the reauthorization of the Violence Against Women Act (VAWA).*

### Background:

2005 marks the tenth anniversary of the *Violence Against Women Act* (VAWA). Despite the enormous strides that VAWA has made for victims of domestic violence, sexual assault, and stalking, Native American women still experience the highest rate of violence of any group in the United States. A 1999 Department of Justice report titled, “American Indians and Crime,” found that Native American women suffer from violent crime at a rate three and a half times greater than the national average (February 1999, NCJ 173386). Researchers believe that this number is actually much higher because the Department of Justice estimates that over 70 percent of sexual assaults are never reported. Many Native American women remain silent due to cultural barriers, a high level of mistrust for non-Indian agencies, and a history of inactivity by state and tribal agencies to prosecute crimes committed against Native Americans.

Furthermore, the judicial system intended to reduce crime and protect victims has significant challenges. Federal and State police and courts do not have adequate resources to investigate and prosecute violent crimes by non-Indians against Indians in Indian Country, and the Federal or State government may not consider violent crimes

in Indian country a priority. Tribes do not have criminal jurisdiction over non-tribal members, even for crimes committed against Native women on the reservation. Fortunately, VAWA provides victims with access to critical resources by establishing grant programs that improve the criminal and civil justice systems response to victims. Even with the best efforts of anti-violence advocates, law enforcement officials and judicial personnel have yet to reach everyone in need of assistance. Despite the successes of VAWA, Native American women are still at greater risk of becoming victims of violence, and the jurisdictional issues that tribes face only further complicate the problem. The reauthorization of VAWA is an opportunity to address these challenges to adequately protect Native women.

#### **Action Steps for the United States Senate:**

- Consult with Indian Country to draft tribal specific provisions in the reauthorization of VAWA.

#### **Policy Recommendation #2:**

*To improve the effectiveness of law enforcement services in Indian Country, Congress should provide funding to support a sufficient number of tribal police officers in Native American communities, ensure personnel are provided with adequate equipment (i.e. bulletproof vests, cars receive maintenance) for safety and communication, and ensure law enforcement officials have access to important information, such as criminal databases. Additionally, sufficient funding should be provided to construct, repair, operate and maintain tribal detention facilities.*

#### **Background:**

Tribal governments, through tribal law enforcements agencies, are the front line for crime control and prevention in Indian Country. These tribal law enforcement agencies are an expression of inherent tribal sovereignty.

In 1997, recognizing the serious nature of criminal justice problems in Indian Country, President Clinton established the Executive Committee for Indian Country Law Enforcement Improvement.



The Committee was responsible for identifying law enforcement problems in Indian communities and developing a strategy for improving crime prevention in Indian Country. In its report, the Committee determined that an infusion of resources into Indian Country law enforcement was essential to improve efforts in this area and that it was necessary for services to be consolidated and improved.

To meet the recommendations of the Committee, the Indian Country Community Oriented Policing Services (COPS) program was created to provide direct funding to tribes on a government-to-government basis to improve tribal crime prevention services and to keep neighborhoods safe. Native American communities face particular challenges in ensuring law enforcement officers have the tools and resources needed to fight crime, and the COPS program offers critical funding to place more police officers on the streets. Training tribal communities on community policing and problem solving strategies is the major focus of this program.

COPS grants have helped Native communities hire 1,800 new police officers since 1999. However, the COPS program requires that tribes fund the law enforcement positions after five years. This means that between 2004 and 2006, 759 law enforcement positions will expire unless Tribes possess their own resources to maintain funding the positions. Most tribes do not have the financial ability to maintain these law enforcement positions that have worked so effectively to secure citizen safety in many communities.

In 2004, the Department of the Interior's Inspector General issued a report, "Neither Safe nor Secure: An Assessment of Indian Detention Facilities," that reaffirmed previous findings that Indian Country detention facilities are understaffed, overcrowded and underfunded. Further, the report found that some facilities were "egregiously unsafe, unsanitary and a hazard to both inmates and staff alike."

#### **Action steps for the United States Senate:**

- Appropriate increased funding to the tribal COPS program.

- Authorize COPS funds to be used to provide for law enforcement personnel beyond the initial five year period.
- Appropriate sufficient funding to construct, repair, operate and maintain detention facilities in Indian Country.

### **Policy Recommendation #3:**

*Congress should recognize the sovereign status of Indian tribes by correcting the definitions in the Homeland Security Act of 2002 to define Indian tribes as separate and distinct from local governments and by authorizing the Department of Homeland Security (DHS) to provide federal first responder funding directly to Indian tribes and encourage states to provide funding to any Indian tribes not receiving direct funding.*

#### **Background:**

There is a critical national interest in addressing the Homeland Security vulnerabilities on Indian lands. More than 25 Indian tribes have jurisdiction over lands that are either adjacent to international borders or are directly accessible to an international border by boat. These lands consist of over 260 miles of the 7,400 miles of the international borders the United States shares with Canada and Mexico. Moreover, energy resources located on tribal lands make up a significant share of the United States' energy resources. Tribal governments hold title to 30 percent of the coal resources west of the Mississippi River, 37 percent of potential uranium resources, and three percent of known oil and gas resources in the United States.

There is also extensive infrastructure located on or near tribal lands that is critical to our nation's security, including dams, hydroelectric facilities, nuclear power generating plants, oil and gas pipelines, transportation corridors of railroads and highway systems, and communications towers.

The *Homeland Security Act of 2002* defines "local government" to include "an Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation." 6 U.S.C. §

101(10)(B). Indian tribes are not local governments. Through statutes, treaties, and executive orders, the United States has recognized the inherent sovereignty of Indian tribal governments and the rights of Native American to self-governance. By virtue of inherent tribal sovereignty, Indian tribes, not State and local governments, have regulatory and jurisdictional authority over Indian lands.

The DHS administers the Homeland Security Grant Program (HSGP), a consolidated grant program that consists of numerous programs. Each of these programs is administered through a single State Administrative Agency (SAA), and each State's SAA is the only authorized applicant for those funds. States are required to pass along no less than 80 percent of the funding they receive under these programs to "local units of government," which includes Indian tribes and local governments. Not all States are providing funds to Indian tribes. Regardless, however, of whether or not States are providing funds to Indian tribes, it is imperative that tribes, as separate and distinct sovereigns with sole jurisdiction over numerous strategic assets or the potential first responder to any terrorist act against certain strategic assets, have direct access to a sufficient and separate funding stream.

#### **Action Steps for the United States Senate:**

- Hold hearings and enact legislation that recognizes the sovereignty of Indian tribal governments for the purposes of Homeland Security funding and programs.
- Establish a tribal set aside or separate funding formula for tribal first responder activities.
- Direct the Department of Homeland Security (DHS) to include a requirement in fiscal year 2006 HSGP program guidance (and guidance for subsequent years) that mandates that States specifically involve Indian tribes in regional or statewide planning or preparedness activities.

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